

**BEFORE THE THREE MEMBER DUE PROCESS PANEL
CONVENED PURSUANT TO Section 162.961 RSMo**

, by & through her)	
Guardian & Next Friend,)	
,)	
)	
Petitioners)	
)	
v.)	
)	
)	
Lakeland R-III School District,)	
)	
Respondent.)	

**ORDER RELATING TO
SECOND MOTION TO DISMISS**

Respondent School District filed a Second Motion to Dismiss with supporting material and argument asserting lack of jurisdiction for the due process hearing. Petitioners filed Suggestions in Opposition. The Panel Chairperson has the authority to dismiss a due process hearing under applicable law and upon proper motion and argument being received from the parties. After a review of the Second Motion to Dismiss and Suggestions in Opposition with supporting documents and arguments for each, the Panel Chairperson finds that there are no significant factual issues that need to be resolved and that the legal principles that apply are dispositive of the Second Motion to Dismiss.

The student is an out-of-state transfer (from Kansas to Missouri) who is severely handicapped under the law (Section 162.675(3) RSMo). After exchange of numerous documents and the filing of an application to the state educational agency (SEA), a determination was made on February 23, 2004 by the SEA that the student would be

accepted by the SEA consistent with the requirements of state law for such transfer placement (Section 162.725 RSMo).

Once the SEA becomes responsible for the education of a severely handicapped student, it is the SEA's procedures that must be followed and not those of the local school district that govern the rights of the student for review of the decision. MO Dept. of Elementary and Secondary Education v. Springfield R-12, 358 F.3d 992 (8th Cir. 2004).

Pursuant to the applicable law and recent judicial precedent adopted by the 8th Circuit, U. S. Court of Appeals, it is determined that the local school district had no decision making authority from which a due process hearing can be sought. The panel therefore is without authority to conduct a hearing. Therefore, the pending second motion to dismiss is granted.

This Order, dismissing the due process hearing scheduled in this matter for April 16, 2004, is entered on April 12, 2004 by

Ivan L. Schraeder, Panel Chairperson

Order provided to Counsels for the parties as follows on the date above noted:

Ms. Le Anna Wiseman for Petitioners	by FAX 573.442.3760
Ms. Teri B. Goldman for Respondent	by FAX 314.275.2066

and by mail through the United States Postal Service.

Order provided to Panelists by mail on the date above noted:

Mr. Jerry Wright, Panel Member
Ms. Jeff Jessee, Panel Member

Order provided to the Department of Elementary & Secondary Education by mail on the date above noted and by FAX to 573.526.4404, as follows:

Ms. Pam Williams, Director
Special Education Compliance
Department of Elementary & Secondary Education
P. O. Box 480
Jefferson City, MO 65102-0480